IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.883 of 1996

Madras Cements Ltd., rep by
T.R.Lakshmi Narayanan .. Appellant/Complainant

vs.

Vijayanagaram Ramamurthy
Proprietor of Sri Parameswari Agencies .. Respondent/Accused

This appeal filed u/s 378 and 386 of Cr.pc has been preferred against the Judgment dated 25.6.1996, in C.C.2707 of 1995 on the file of VII Metropolitan Magistrate, Madras.

For Appellant : Mr.K.P.Ananthakrishnan

For Respondent : Mr.J.Sivaganesh
(Legal Aid Counsel)

JUDGMENT

This appeal has been preferred against the judgment in C.C.No.2707 of 1995 on the file of VII Metropolitan Magistrate, George Town, Chennai. A private complaint was filed under Section 200 of Cr.P.C. against the accused under Section 138 of Negotiable Instruments Act(hereinafter referred to as"the Act").

2. The complaint was taken on file by the learned Judicial Magistrate who had issued summons to the accused and on his appearance, furnished copies under Section 207 of Cr.P.C. and when the offence was explained to him and questioned, the accused pleaded not guilty.

3. On the side of the complainant, P.Ws 1 to 3 were examined and Exs P1 to P9 were marked.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3a. P.W.1 is the Accountant of the complainant Company.Ex P1 is the power of attorney in favour of P.W.1 given by the complainant Company . Admittedly, the accused is an agent for the complainant's company for selling cements and according to P.W.1 to discharge a subsisting dues amounting to Rs.1,95,000/- incurred in the said transactions, the accused had drawn a cheque on 29.12.1994 in favour of the complainant for a sum of Rs.1,95,000/-. When the cheque was presented in the bank for collection, the same was returned with an endorsement, "there is no sufficent fund in the account of the drawer of the cheque". Exs P.3 and P4 are the memo and notice respectively sent by the bank along with the impugned cheque Ex P2 . As required under Section 138(b) of the Act, the complainant had issued a notice to the accused under the original of Ex P5 on 2.2.1995 Ex P6 is the acknowledgement dated 15.2.1995 for the accused having received the original of Ex P5 notice. The accused had not sent any reply .

3b.P.W.2 is the Assistant Manager of the State Bank of India, Commercial Branch, Chennai. According to him, the complainant Company is having current account with the said bank and Ex P2 impugned cheque was presented on 29.12.1994 for realisatiion but the same was returned on the ground that there is no sufficient funds in the account of the accused. Ex P4 is the notice sent along with Ex P2 dishonoured Cheque.

3c. P.W.3 is the Branch Manager of Andhra Bank, Srinagar Colony, Gundur. According to him, the accused is having current account in their bank in the name of "Parameswari Agencies". Ex P2 cheque was forwarded to their bank for collection, but the same was returned by their bank on 18.1.1995 on the ground that there is no sufficient amount in the credit of the account of the accused. Ex P7 is the statement of accouant relating to the accused. P.W.3 would state that only a sum of Rs.599/- was in credit in the account of the accused as on 18.1.1995.

4. When incriminating circumstances were put to the accused, he would deny his complicity with the crime. He has examined himself as D.W.1 and exhibited Ex D1 to D4. After going through the available evience both oral and documentary, the learned trial Judge has come to a conclusion that the complainant has failed to prove that only in order to discharge a subsisting debt, the impugned cheque Ex P2 was drawn by the accused in favour of the complainant and consequently dismissed the complaint preferrred by the complainant, which necessitated the complainant to prefer this appeal.

5. Now the point for determination in this appeal is whether Ex P2 impugned cheque was drawn in favour of the complainant to discharge a subsisting debt or not?

6.Heard Mr.K.P.Ananthakrishnan, learned counsel for the appellant and Mr.J.Sivaganesh,the learned Legal Aid counsel for the respondent and considered their rival submissions.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7.The point:-

To warrant conviction under Section 138 of the Act, it is the duty of the complainant to prove that the cheque drawn by another person was only to discharge or in part of any debt or other liability. As per Explanation to Section 138 of the Act, debt or other liability means a legally enforceable debt or other liability. The learned trial Judge has observed in his Judgement that admittedly, the transaction between the accused and the complainant has come to an end in the month of August 1994 itself but the impugned cheque Ex P2 was drawn on 29.12.1994. The complainant has failed to prove through the material documents to show that as on August 1994, a sum of Rs.1,95,000/- was due from the accused to the complainant in the cement transactions.

8.According to D.W.1, the accused, Ex P2 impugned cheque was handed over to the complainant only as a security for the supply of the goods by complainant as a blank one and the date and amount have been subsequently filled up by the complainant for the purpose of using it as a document in this case. According to hm, he has sent a reply notice for the notice issued by the complainant under the original of Ex D3. The reply notice , even though, has not been produced by the complainant, has been produced by the accused as Ex D3. At this juncture, the learned counsel appearing for the appellant would contend that the reply notice was sent 15 days after the receipt of the notice under Ex P3. But P.W.1 was examined before the Court on 21.9.1995 but he had received the original of Ex D3 notice as on 21.4.1995 itself under Ex D4 acknowledgment. But in the chief Examination P.W.1 would depose that the accused has not sent any reply notice.

9. Even before this Court, the learned counsel appearing for the appellant has produced certified xerox copy of the account maintained for the said transactions between the complainant and the accused. Even though, the copy was not produced and marked, even the copy of the statement of account, shows that the transactions between the complainant and the accused came to an end in the month of August 1994 itelf and in the debit column, a sum of Rs.976/82ps was shown as the charges for the return of the cheque dated 26.11.1994 but the impugned cheque in this case is dated 29.12.1994. So the abovesaid account itself will go to show that the said account is not relating to this transaction in which according to the complainant a sum of Rs.1,95,000/- was due as on 29.12.1994.

10. The learned counsel appearing for the appellant relying on a decision reported in K.N.Beena-v- Muniyappan and another(2002 Supreme Court Cases(cri)14)and contended that mere denial of the accused in the reply notice is not enough to throw away the case of the complainant. But in this case, apart from the denial in Ex D3 reply notice which was not accepted by P.W.1, the accused had entered into the box and examined himself as D.W.1 to the effect that impugned cheque ExP2 was not drawn to discharge a subsisting liability.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

11. The learned counsel appearing for the appellant relying on Sections 139 and 118 (a) and (b) of the Act, would contend that if the signature in the impugned cheque was admitted by the accused, then the presumption must be in favour of the payee or the holder of the cheque that it was drawn only to discharge a subsisting liability. No doubt presumption under Sections 118(a)and (b) and 139 shall be that only to discharge the liability the drawer had signed the impugned cheque. But, such a presumption is a rebuttable presumption. Even in the box, D.W.1 would admit that the impugned Cheque Ex P2 was drawn only as a security for the cement transactions entered into him and the complainant and that the date and amount in the cheque were not written by him but the date of the cheque and other particulars in Ex P2 impugned cheque were filled up only by the complainant for the purpose of this case. Now the burden shifts on the complainant to show that on the date of drawal of the impugned cheque ie., on 29.12.1994, the accused owe to the complainant a sum of Rs.1,95,000/-, which is not done so in this case as rightly held by the learned trial Judge. Under such circumstances, I do not find any reason to interfere with the findings of the learned trial Judge in C.C.No.2707 of 1995 on the file of VII Metropolitan Magistrate, George Town, Chennai. The point is answered accordingly.

12. In fine, the appeal is dismissed confirming the Judgment in C.C.No.2707 of 1995 on the file of VII Metropolitan Magistrate,George Town, Chennai. The service rendered by Mr.J.Sivaganesh, the learned Legal Aid Counsel is recorded with appreciation. The Member Secretary of the Tamil Nadu Legal Services Authority is directed to pay a sum of Rs.3,000/- to the legal aid counsel towards his remuneration.

sg

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,
1. VII Metropolitan Magistrate, George Town, Chennai
2. -Do- Thro' The Chief Metropolitan Magistrate,
   Egmore, Chennai-8.
3. The Member Secretary, Tamil Nadu Legal Services Authority,
   Chennai.

+1 cc to Mr.K.P.Anantha Krishna Advocate Sr.No.45100.

+1 cc to Mr.J.Shiva Ganesh, Advocate Sr.No.45176.

BV(CO)
dcp/30.7.07 Crl.A.No.883 of 1996

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/